

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNOLL, INC.,

Plaintiff,

No. 11 cv. 0488 (AKH)
ECF Case

-against-

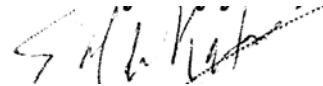
MODERNO, INC. d/b/a REGENCY SHOP,
AND MIKE SAXENA

Defendants.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION UNDER
FEDERAL RULE OF CIVIL PROCEDURE 12(c)
FOR JUDGMENT ON THE PLEADINGS

Dated: New York, NY
December 21, 2011

Respectfully submitted,



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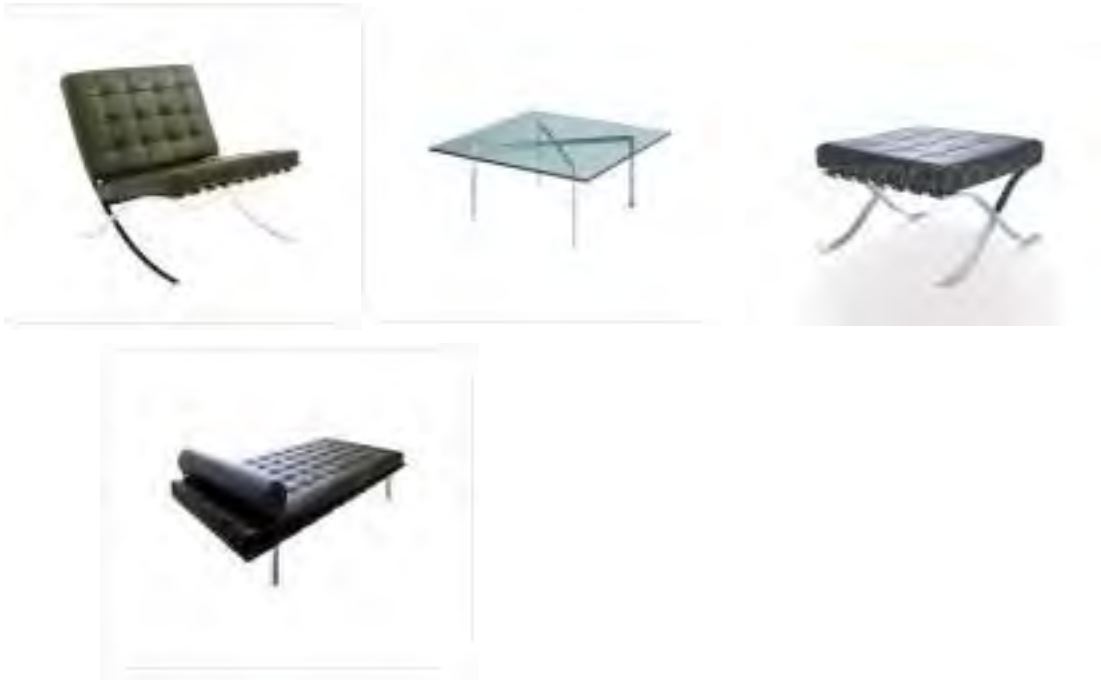
Defendants.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION UNDER FEDERAL
RULE OF CIVIL PROCEDURE 12(c) FOR JUDGMENT ON THE PLEADINGS

In accordance with this Court's Order of December 2, 2011, Defendants respectfully submit their motion for Judgment on the Pleadings (attached for convenience as Exhs. A and B) under Rule 12(c), F.R.C.P.

FACTS AND SUMMARY OF ARGUMENT

Plaintiff Knoll is a furniture company. The Complaint alleges that in 1965 Ludwig Mies van der Rohe assigned to Knoll all of his rights in respect of certain items of furniture he designed and produced in 1929. Knoll obtained trademark registrations on the shapes of these furniture items in 2004. (Am. Compl. Exhs. A, B, C, D.) The shapes are depicted on and are the sole subject matter covered by, the registrations. (*Id.*)



In this lawsuit, Knoll has asserted claims against Defendants based on their sale of reproductions of these four furniture items, as pictured above -- a chair (Am. Compl. ¶ 15), a table (*id.* ¶ 20), a stool (*id.* ¶ 16), and a couch (*id.* ¶ 17). The claims asserted by Knoll are for trademark infringement under Section 32 of the Lanham Act, false designation of origin under Section 43(a) of the Lanham Act, unfair competition under New York common law, and Dilution under Section 360-l of the New York General Business Law. The essence of Knoll's Complaint is that, "As a result of Defendants' improper sale of furniture in the form of the designs that are the subject of Knoll's trademark registrations, architects, the furniture trade and the purchasing public are likely to buy Defendants' products in the erroneous belief that they are authorized reproductions of Knoll's trademarked designs or that the furniture item are otherwise associated with Knoll." (Am. Compl. ¶ 50.)

Defendants sell their products on their website, www.regencyshop.com, under their own trademark, "IBIZA". Knolls sells the products on its website, www.knoll.com, under its trademark, "Barcelona".

Products conforming to shapes of these pieces of furniture have been sold for years by a great many websites, and today one can buy replicas from well over one hundred websites. *Cf.* Amend. Answer Exh. A. Knoll, claiming that it produces a "genuine" copy of the 1929 Mies

designs using his original specifications, charges many thousands of dollars for each of these items—for example, the “Barcelona Chair” (in stainless steel) sells for approximately \$7500.¹ By contrast, none of the dozens of websites offering non-authentic replicas of this furniture charge anywhere near the prices Knoll charges. *Cf.* Amend. Answer Exh. A. For example, Defendants sell their IBIZA Chair reproduction for \$345.² The number and diversity of the websites selling these popular shapes, whether using the name “Barcelona”, “Mies”, “Pavilion”,³ or their own trademark, is quickly and dramatically revealed by even a cursory Google search (using search terms such as “Mies furniture”, “Barcelona furniture”).

This case is a “product configuration” case. No claim is made by Knoll that the Defendants are infringing any source-signifying Knoll trademark or trade dress in the form of labeling or packaging.

Four grounds for dismissal are urged on this motion.

1. Under established Second Circuit law, Knoll’s Amended Complaint should be dismissed as it fails to allege that any of the furniture items are non-functional. This deficiency has repeatedly been held to warrant dismissal of a pleading alleging violations of the Lanham Act based on the copying of product configurations.

2. Knoll’s claims must in all events be dismissed under the Supreme Court’s decisions in *Wal-Mart* (2000) and *Traffix* (2001). These decisions establish that the configuration of a utilitarian product, such as an item of furniture, is functional, is in the public domain, and may not be trademarked and thereby monopolized for an indefinite time period. To use an example: The Wonder Bread Company may enjoin others from copying the trademark “Wonder Bread” or its distinctive packaging trade dress which shows red, yellow and blue balloons. What it may not claim, however, assuming the absence of patents, is the right to prevent anyone who so desires from copying the shape, texture and ingredients of the bread itself and selling it under some different trademark and with different packaging. Over one hundred years of Supreme Court decisions have emphasized this rule of law. *Wal-Mart* and *Traffix* are the latest decisions

¹ http://www.knoll.com/products/product.jsp?prod_id=71;
[http://www.knoll.com/products/pricelists/KnollStudio\(PLKS0711\).pdf#page=1&pagemo de=bookmarks&view=fit.](http://www.knoll.com/products/pricelists/KnollStudio(PLKS0711).pdf#page=1&pagemo de=bookmarks&view=fit)

² [http://www.regencyshop.com/p63/Ibiza-Chair---Pure-Leather,-Stainless-Steel/product_info.html.](http://www.regencyshop.com/p63/Ibiza-Chair---Pure-Leather,-Stainless-Steel/product_info.html)

³ Mies designed the chairs as part of the German Pavilion at the Barcelona Exhibition in 1929.

and they apply the Court's jurisprudence in this area specifically to the issue of whether product configurations can be trademarked.

3. A third alternative ground for dismissal is based on the fact that, on those web pages where their IBIZA products are offered for sale, Defendants have placed disclaimers of unprecedented prominence, clarity and comprehensiveness. No rational person visiting Defendants' website could possibly conclude that there is any relationship between Defendants and Knoll, or that Knoll is the source of Defendants' products. The possibility of confusion actionable under the Lanham Act is zero. Second Circuit law recognizes that in an appropriate case a disclaimer can operate to defeat a trademark infringement claim.

4. Finally, where no valid trademark exists, claims for unfair competition and dilution may not be maintained under New York law consistent with pre-emption and Supremacy Clause considerations.

We submit that there are no triable issues of fact on any of these issues and that judgment as a matter of law may and should be entered for Defendants on the pleadings.

ARGUMENT

I. KNOLL'S PLEADING FAILS TO ALLEGE NON-FUNCTIONALITY IN EITHER GENERAL OR SPECIFIC TERMS AND IS DEFICIENT AS A MATTER OF LAW

Rule 12(c) and Rule 12(b)(6) motions are governed by the same standards. *Desiano v. Warner-Lambert Co.*, 467 F.3d 85, 89 (2d Cir. 2006). These standards were well-articulated in the recent case of *Quartuccio v. Lesko*, 2011 U.S. Dist. LEXIS 137885, 4-5 (E.D.N.Y. Nov. 22, 2011) (Rule 12(c) challenge). In discussing the Supreme Court's recently heightened pleading requirements applicable to a motion addressed to the pleadings, Judge Seybert stated:

In deciding Rule 12(b)(6) motions to dismiss, the Court applies a "plausibility standard," which is guided by "[t]wo working principles," *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009); *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). First, although the Court must accept all allegations as true, this "tenet" is "inapplicable to legal conclusions;" thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Harris*, 572 F.3d at 72 (alteration in original) (quoting *Ashcroft*, 129 S. Ct. at 1949). Second, only complaints that state a "plausible claim for relief" can survive Rule 12(b)(6). *Id.* Determining

whether a complaint does so is “a context specific task that requires the reviewing court to draw on its judicial experience and common sense.”⁴

Knoll’s Amended Complaint alleges many facts concerning Mies van der Rohe (Am. Compl. ¶¶ 11-20), Knoll’s promotional activities (*id.* ¶¶ 22-27), and its trademark registrations (*id.* ¶¶ 28-33 & Exhs. A-F). But in terms of allegations relevant to Defendants’ purported liability, there are none.

As discussed in more detail below, no product configuration can be enjoined under the Lanham Act if it is functional, even in cases where, as here, the plaintiff has obtained trademark registrations. Under established Second Circuit case law, a complaint alleging Lanham Act violations based on a defendant’s alleged infringement of a product configuration must specify in detail what aspects of the product configuration are claimed to be non-functional.

Thus, in *Landscape Forms, Inc. v. Columbia Cascade Co.*, 113 F.3d 373, 381 (2d Cir. 1997), the court held that a “focus on the overall look of a product does not permit a plaintiff to dispense with an articulation of the specific elements of the product configuration which it claims warrants protection.” The case law makes clear that merely referring to and relying upon the pictures and summary descriptions in the trademark registrations is insufficient. *See Heller, Inc. v. Design Within Reach, Inc.*, 2009 U.S. Dist. LEXIS 71991 (S.D.N.Y.) (dismissal on Rule 12(b)(6) motion: plaintiff’s reliance on trademark registrations did not supply required specificity); *Sherwood 48 Assocs. v. Sony Corp. of America*, 76 Fed. Appx. 389, 2003 WL 2222 9422, at *2 (2d Cir. 2003) (affirming Rule 12(c) judgment on the pleading for failure to plead specifics of alleged non-functional trade dress)⁵; *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 115-16 (2d Cir. 2001); *Nat’l Lighting v. Bridge Metal Indus., LLC*, 601 F. Supp. 2d 556, 562 (S.D.N.Y. 2009) (dismissal on the pleadings: a “laundry list of the elements that constitute a . . .

⁴ In evaluating a Rule 12(c) motion, the court may consider facts alleged in the pleadings, documents appended to the pleadings or incorporated by reference, and those for which it may take judicial notice. *See, e.g., Automated Salvage Transp. v. Wheelabrator Env’tl. Sys.*, 155 F.3d 59, 67 (2d Cir. 1998); Fed. R. Evid. 201 (judicial notice); *Magnoni v. Smith & Lacqueria, LLP*, 701 F. Supp. 2d 497, 501 (S.D.N.Y. 2010) (court may take judicial notice of articles and web sites published on the Internet); *Lan Lan Wang v. Pataki*, 396 F. Supp. 2d 446, 453 n.1 (S.D.N.Y. 2005) (judicial notice).

⁵ We note that *Sherwood* is a non-citable case under the Second Circuit’s rules, as it pre-dates 2007. However, the case was cited by Judge Koeltl in his 2009 *Heller* opinion which we cite in the text, and it would seem odd if parties to a litigation could not cite the same cases that the judges in the district deciding the case cite and rely upon as relevant. If Your Honor disagrees, we respectfully would ask that the *Sherwood* case not be considered.

design” is insufficient).

Knoll’s Amended Complaint is completely inadequate to support its asserted claims. Far from failing to allege non-functionality with specificity, not a single allegation of the Amended Complaint addresses or even mentions non-functionality.

II. ***THE LANHAM ACT DOES NOT EMPOWER THE COURTS TO EXCLUDE COMPETITION WITH RESPECT TO UNPATENTED SHAPES OF UTILITARIAN COMMERCIAL PRODUCTS, IN THIS CASE CERTAIN ITEMS OF FURNITURE***

A. The Applicable Law

Turning to the merits of Defendants’ first substantive argument—that the furniture designs are functional and cannot be trademarked—this issue is specifically controlled by the Supreme Court’s decisions in *Wal-Mart Stores v. Samara Bros.*, 529 U.S. 205 (2000) and *Traffix Devices v. Mktg. Displays*, 532 U.S. 23 (2001). These decisions continue a long line of decisions dating back for more than 100 years. The lietmotif running through all these decisions is that, while the trademark law can be used to prevent confusion, it cannot be used to monopolize a product.

The Patent Clause--Article I, § 8, cl. 8, of the Constitution--gives Congress the power “[t]o promote the Progress of Science and useful Arts, by securing *for limited Times* to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (emphasis added). The Patent Clause reflects a balance between the need to encourage innovation and the avoidance of unwarranted or unduly long monopoly rights. *Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141 (1989) (this opinion arguably provides the most exhaustive and analytical treatment by the Court of this area of law).

The Patent Clause does not authorize trademarks.⁶ The key point established and emphatically reiterated by the Supreme Court and some of our greatest jurists is that no type of trademark or unfair competition law, whether federal or State, may cross the bounds set by the Patent Clause. *See Singer Mfg. Co. v. June Mfg. Co.*, 163 U.S. 169, 185 (1896) (Singer sewing machines could not be protected by unfair competition claim after expiration of patents); *Flagg*

⁶ Indeed, the first trademark statutes passed by Congress were based on the Patent Clause and were held unconstitutional by the Supreme Court inasmuch as the Patent Clause provided no authority for trademark legislation. *See The Trade-Mark Cases*, 100 U.S. 82 (1879). Congress has passed all subsequent trademark legislation under the Commerce Clause.

Mfg. Co. v. Holway, 178 Mass. 83, 59 N.E. 667 (1901) (Holmes, J.)⁷; *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111 (1938) (Brandeis, J.); *Crescent Tool Co. v. Kilborn & Bishop Co.*, 247 F. 299, 300 (2d Cir. 1917) (L. Hand, J.)⁸; *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964) (Black, J.); *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964);⁹ *Qualitex Co. v. Jacobson Products Co.*, 514 U. S. 159 (1995) (Breyer, J.) (unpatented functional products are in the public domain and may not be trademarked); *Bonito Boats*, 489 U.S. at 146 (O'Connor, J.) (the copying of unpatented products is part of the “very lifeblood of a competitive economy”); cf. *Thomas & Betts Corporation v. Panduit Corp.*, 65 F.3d 654, 657 (7th Cir. 1995) (“Copying is not only good, it is a federal right -- a necessary component to the patent system’s grant of limited monopolies.”).¹⁰

The *Wal-Mart* (Scalia, J.) and *Traffix* (Kennedy, J.) cases fall squarely within the Court’s jurisprudence as to the scope and purpose of the Patent Clause, and apply that jurisprudence to the scope of protection that may be granted to trademarks. The cases arose after the Court, in *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U. S. 763, 768-69 (1992), held that a restaurant’s overall appearance, its “trade dress”, could be considered inherently distinctive and, therefore, could be afforded Lanham Act protection without proof of secondary meaning. In *Wal-Mart*,

⁷ “Both zithers are adapted for the use of patented sheets of music, but the zithers are not patented. Under such circumstances the defendant has the same right that the plaintiff has to manufacture instruments in the present form, to imitate the arrangement of the plaintiff’s strings or the shape of the body. In the absence of a patent the freedom of manufacture cannot be cut down under the name of preventing unfair competition.... [T]he plaintiff’s right can be protected sufficiently by requiring the defendant’s zithers to be clearly marked so as to indicate unmistakably that they are the defendant’s and not the plaintiff’s goods.”

⁸ “[The] plaintiff has the right not to lose his customers through false representations that those are his wares which in fact are not, but he may not monopolize any design or pattern, however trifling. The defendant, on the other hand, may copy the plaintiff’s goods slavishly down to the minutest detail; but he may not represent himself as the plaintiff in their sale”.

⁹ The Court invalidated, as inconsistent with the Patent Clause, state unfair competition laws that outlawed the copying of novel product configurations.

¹⁰ See also *Qualitex*, 514 U.S. at 164-65: “It is the province of patent law, not trademark law, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time, 35 U.S.C. §§ 154, 173, after which competitors are free to use the innovation. If a product’s functional features could be used as trademarks, however, a monopoly over such features could be obtained without regard to whether they qualify as patents and could be extended forever (because trademarks may be renewed in perpetuity).”

Samara claimed that its clothing designs qualified as inherently distinctive trade dress under *Two Pesos* and could be enforced without proof of secondary meaning. However, the *Wal-Mart* Court distinguished *Two Pesos* as involving non-functional trade dress in the form of packaging, not the functional, actual product itself. 529 U.S. at 215 (“*Two Pesos* is inapposite to our holding here because the trade dress at issue, the décor of a restaurant, seems to us not to constitute product design.”)

The Court pointed out that (1) trademark law was not designed, as was the Patent law, to confer monopoly rights on functional products but rather to protect words, symbols and other non-functional indicia of source from being unfairly misappropriated to mislead consumers (*id.* at 214); and (2) a product’s shape will “almost invariably” be functional and not constitute a source identifier. *Per* Justice Scalia:

The attribution of inherent distinctiveness to certain categories of word marks and product packaging derives from the fact that the very purpose of attaching a particular word to a product, or encasing it in a distinctive packaging, is most often to identify the source of the product.... Consumers are therefore predisposed to regard those symbols as indication of the producer, which is why such symbols “almost *automatically* tell a customer that they refer to a brand,” and “immediately ... signal a brand.”

529 U.S. at 212-213 (emphasis in original, citation omitted).

In establishing a new rule that the designation of “inherent distinctiveness” could *never* be applied to product designs, the Court explained that it was motivated not simply because product shapes would rarely if ever warrant such a designation. Justice Scalia stated that the Court also wanted to empower the lower courts summarily to dispose of “strike suits” where the Alleged trademark consisted of nothing more than the product itself.

The fact that product design almost invariably serves purposes other than source identification not only renders inherent distinctiveness problematic; it also renders application of an inherent-distinctiveness principle more harmful to other consumer interests. Consumers should not be deprived of the benefits of competition with regard to the utilitarian and esthetic purposes that product design ordinarily serves by a rule of law that facilitates plausible threats of suit against new entrants based upon alleged inherent distinctiveness.

Id. at 213.

Traffix, decided one year later in 2001, provided concrete criteria for determining functionality (1) where the product configuration is utilitarian, and (2) where the product is non-

utilitarian and the reason consumers buy the product is because of its “aesthetic” appeal rather than because it comes from a specific source.

As this lawsuit involves utilitarian items of furniture, it is governed by the functionality test the *Traffix* Court adopted/affirmed for utilitarian products. With respect to such products, the Court referenced its 1982 decision in *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U. S. 844 (1982). The Court stated that “Whether a utility patent has expired or there has been no utility patent at all, a product design should be viewed as functional when it is “‘essential to the use or purpose of the article’ or “‘affects the cost or quality of the article. *Traffix*, 532 U.S. at 35 (emphasis added), quoting *Inwood Labs.*, 456 U.S. at 850 n.10.

This definition will, as Justice Scalia stated in *Wal-Mart*, “almost invariably” result in findings of functionality with respect to utilitarian products. 529 U.S. at 213. A good example of how this definition works in practice was given by Judge Easterbrook in *Jay Franco & Sons, Inc. v. Franek*, 615 F.3d 855, 857 (7th Cir. 2010), involving a trademarked circular beach towel.

Traffix says that a design is functional when it is “essential to the use or purpose of the device or when it affects the cost or quality of the device,” 532 U.S. at 33, a definition cribbed from *Inwood Laboratories*, ... 456 U.S. at 850 n.10. So if a design enables a product to operate, or improves on a substitute design in some way (such as by making the product cheaper, faster, lighter, or stronger), then the design cannot be trademarked; it is functional because consumers would pay to have it rather than be indifferent toward or pay to avoid it.

The *Traffix* Court noted that *non*-functionality, in terms of a utilitarian product configuration, would only pertain to some feature that is “merely an ornamental, incidental, or arbitrary aspect of the device”). *See also Eppendorf-Netheler-Hinz GmbH v. Ritter GmbH*, 289 F.3d 351, 355 (5th Cir.), *cert. denied*, 537 U.S. 1071 (2002). (“trade dress protection extends only to incidental, arbitrary or ornamental product features which identify the source of the product. If a product feature is functional, it cannot be protected trade dress. Unless protected by patent or copyright, functional product features may be copied freely by competitors in the marketplace”).

The *Traffix* Court also resolved a conflict among the circuits: some lower courts had assumed that, to find a utilitarian product shape functional, there must be proof that viable competitive alternatives do not exist—the so-called “competitive necessity” test. The Court held that competitive considerations were relevant only in cases, such as *Qualitex Co. v. Jacobson Products Co.*, 514 U. S. 159 (1995), where the defendant sought to prove a defense of “aesthetic

functionality”. The Court made it clear that a competitive necessity test was wholly inapposite where the issue was functionality of a utilitarian product configuration under the *Inwood* test:

It is proper to inquire into a “significant non-reputation-related disadvantage” [i.e., the competitive necessity test] in cases of aesthetic functionality, the question involved in *Qualitex*. ***Where the design is functional under the Inwood formulation there is no need to proceed further to consider if there is a competitive necessity for the feature.***

532 U.S. at 33 (emphasis added.)¹¹

The *Traffix* Court re-emphasized further concepts dating back to *Singer* and *Kellogg*, namely, that no amount of fame can secure trademark protection for a product, and that investments directed toward fostering an “association” between a producer and a product will not trump the policies and provisions of the Patent Clause:

The Lanham Act, furthermore, does not protect trade dress in a functional design simply because an investment has been made to encourage the public to associate a particular functional feature with a single manufacturer or seller. The Court of Appeals erred in viewing MDI as possessing the right to exclude competitors from using a design identical to MDI’s and to require those competitors to adopt a different design simply to avoid copying it. MDI cannot gain the exclusive right to produce sign stands using the dual-spring design by asserting that consumers associate it with the look of the invention itself.

532 U.S. at 34-35. *See also, e.g., Stiffel*, 376 U.S. at 231 (“That Stiffel originated the pole lamp and made it popular is immaterial”).¹²

¹¹ In terms of Second Circuit cases, prior to *Wal-Mart* and *Traffix*, the Second Circuit had stated: “[T]his circuit appears to be moving toward a rule that packaging is usually indicative of a product’s source, while the design or configuration of the product is usually not so.” *Landscape Forms, Inc. v. Columbia Cascade Co.*, 113 F.3d 373, 379 (2d Cir. 1997). Other Second Circuit cases assumed, as did some circuit courts, that the test of functionality was “competitive necessity” even as to utilitarian products. *See Stormy Clime, Ltd. v. Progroup, Inc.*, 809 F.2d 971 (2d Cir. 1987). As noted in the text, *Traffix* resolved a split in the circuits and explicitly rejected a “competitive necessity” rule as to utilitarian products that met the functionality definition of *Inwood*. Post-*Traffix*, the Second Circuit has not had occasion to decide any case that has involved the *Inwood* functionality test. *Nora Beverages, Inc. Perrier Group of America*, 269 F.3d 114 (2d Cir. 2001) (court affirmed dismissal by lower court, which had applied pre-*Wal-Mart* law; court noted, however, that the case could have been dismissed based on *Traffix* and related cases).

¹² To be relevant in a trademark context, an “association” must be akin to a word mark in directing a purchase decision. Someone looking at an unlabeled roll of film may “associate” it with Kodak; someone looking at a beautiful non-labeled piano may “associate” it with Steinway; someone looking at an unlabeled replica of a Stickley chair may “associate” the piece of furniture with that famous designer – but that is not a *purchase-related* association and has no trademark significance. *Cf. Kellogg*, 305 U.S. at 118. It was perhaps best said by the Sixth Circuit in *West Point Mfg. Co. v. Detroit Stamping Co.*, 222 F.2d 581, 595 (6th Cir.), *cert. denied*, 350 U.S. 840 (1955) (applying *Kellogg* test), namely, that an

Finally, the *Traffix* Court made clear that while proof of secondary meaning could support trademark protection for aesthetic designs, once a utilitarian product shape has been found to be functional, there is no occasion to consider a claim of alleged secondary meaning as to that shape. *Traffix* at 33 (“Functionality having been established, whether MDI’s dual-spring design has acquired secondary meaning need not be considered”).

B. Knoll’s Product Designs Cannot Be Protected By Trademark

In view of the applicable case law, we submit that there is no legally cognizable theory of liability upon which this lawsuit could be grounded. Notwithstanding Knoll’s “incontestable” registrations, not one of Knoll’s four claims can stand as a matter of law. In a situation where, as here, the product configurations are utilitarian and functional, there can be no trademark rights, and any registrations lose all legal force.¹³ Nor may relief be obtained under state unfair competition law. *Sears, Compco, Bonito Boats*.

The four “Barcelona” items easily satisfy the Supreme Court’s test for functionality. They are utilitarian by any definition. The product configurations are “essential to the use and purpose of the product.” *Traffix*, 532 U.S. at 35; *Inwood*, 456 U.S. at 850 n.10. They “enable[] [the] product[s] to operate” (*Jay Franco & Sons*, 615 F. 3d at 857); they are “functional because consumers would pay to have [the designs] rather than be indifferent toward or pay to avoid [them]...” (*id.*).

As in the case of all chairs, tables, stools and couches, in designing the four pieces of furniture at issue, Mies had to include legs, seats, backs, straps, table tops, etc. These are the features which had to be included because they are “essential to the use and purpose of the product.” *Traffix*, 532 U.S. at 35; *Inwood*, 456 U.S. at 850 n.10. And these are the only product features depicted and claimed on Knoll’s trademark registrations. (Amend. Compl. Exhs A-D.) Indeed, as Knoll’s Amended Complaint and its registrations make clear, the product “features” in this case are nothing other than the products themselves.

“association” of trademark significance is one that leads a consumer to say to himself: “That is the article I want because I know its source”. The fame and generalized “association” Knoll alleges are meaningless from a trademark standpoint because they say nothing as to the desire of consumers to want Knoll as the source of their purchases.

¹³ The Lanham Act itself makes this point very clear in specifying that any “incontestable” mark may in fact be contested on grounds of functionality. 15 U.S.C. § 1115(b)(8). Knoll’s registrations simply beg the functionality issue. As for Knoll’s claim that Defendants have the burden of proof, that is true, but it is also abundantly true that Defendants’ have met that burden in this case.

The fact that Mies made design choices does not render the products non-utilitarian or non-functional. Mies' product designs are not "ornaments"; they are the actual products; without their component parts the products would be useless. The elements Mies chose are functional "not because [they are] the only way to do things, but because [they] represent[] one of many solutions to a problem" that had to be resolved. *Specialized Products Inc. v. Greenwich Industr. L.P.*, 616 F.3d 722, 727 (7th Cir. 2010).¹⁴

The reason Justice Scalia could state with such certainty that product configurations will "almost invariably" be functional, is because virtually any utilitarian product one can think of will obviously have to be made of elements that are essential for the product to operate as intended.

In sum, if "trademarks" such as Knoll seeks to enforce were allowed, the result would be that purely utilitarian, functional shapes could effectively enjoy patent-type protection for an unlimited term, violating a rule the Supreme Court has, as we have seen, protected and fostered for over 100 years. Aside from the vast number of furniture items having highly distinctive appearances, there are literally thousands, probably hundreds of thousands if not millions, of interesting, distinctive-looking products on the market, from tools, to rugs, to bottles, to hats, eyeglass frames, computer devices, personal items such as wallets and belts--and on and on. As the Ninth Circuit put it in 1999, correctly anticipating how the Supreme Court would analyze the functionality issue, "[t]o uphold a finding of infringement here... would suggest that the general appearance of almost *any* unpatented product rarely if ever could be copied faithfully." *Leatherman Tool Group, Inc. v. Cooper Indus.*, 199 F.3d 1009, 1011 (9th Cir. 1999) (emphasis in original).

¹⁴ Mies van der Rohe was a giant in the field of architecture and the Modernistic movement. It is preposterous to think that he designed the furniture pieces in question so that they would serve as trademarks, rather than as functional reflections of his philosophy. As is well known, the Barcelona chair was designed to provide elegant seating for the visit of the King and Queen of Spain to the 1929 Exhibition in Barcelona. As Mies said of the chair: "The chair is a very difficult object. Everyone who has ever tried to make one knows that. There are endless possibilities and many problems - the chair has to be light, it has to be strong, it has to be comfortable. It is almost easier to build a sky scraper than a chair." <http://www.thedesignfile.net/thedesignfile/2011/09/iconic-barcelona-chair-is-always-stylish.html>. This approach is the antithesis of one that emphasizes non-functional items-- ornaments or arbitrary designs unrelated to the product's utilitarian use and purpose-- which can serve as a trademark/trade dress.

III. ***DEFENDANTS' DISCLAIMERS PRECLUDE A FINDING OF LIKELIHOOD OF CONFUSION AS A MATTER OF LAW***

It is settled law in the Second Circuit that a disclaimer can serve as a complete answer to a charge of trademark infringement, although the defendant bears the burden to show that the disclaimer will be effective. The court commented very favorably on the use of disclaimers in *Consumers Union of United States, Inc. v. General Signal Corp.*, 724 F.2d 1044, 1053 (2d Cir. 1983), *cert. denied*, 469 U.S. 823 (1984) (injunction not available “where there is any possibility that an explanation or disclaimer will suffice”). *See also Soltex Polymer Corp. v Fortex Industries, Inc.*, 832 F.2d 1325, 1329-30 (2d Cir. 1987) (district court has wide discretion in fashioning relief, including use of disclaimers).

In subsequent cases, the Second Circuit expressed reservations as to the effectiveness of disclaimers. *See Home Box Office, Inc. v. Showtime/The Movie Channel, Inc.*, 832 F.2d 1311, 1315 (2d Cir. 1987), and *Charles of Ritz Group, Ltd. v. Quality King Distribs., Inc.*, 832 F.2d 1317, 1324 (2d Cir. 1987); *Profitess Physical Therapy Ctr. v. Pro-Fit Orthopedic & Sports Physical Therapy P.C.*, 314 F.3d 62, 70-71 (2d Cir. 2002) (mere use of negator words such as ‘no’ or ‘not’ generally ineffective).

Most recently, the court has assumed a balanced position and has reaffirmed that disclaimers in proper cases can be useful in resolving trademark disputes. *Patsy's Italian Rest., Inc. v. Banas*, 658 F.3d 254, 273-74 (2d Cir. 2011): “Given the district court’s great flexibility in fashioning relief ... we have frequently recognized that the use of a disclaimer sign can, in the right circumstances, be appropriate relief.” *See also Fourth Toro Ltd. Partnership v. PV Bakery, Inc.*, 88 F. Supp. 2d 188, 198-99 (S.D.N.Y. 2000) (AKH) (to prevent confusion, the court ordered disclaimers of non-affiliation).

Defendants submit that, if there was ever a case where a disclaimer should be held effective as a matter of law, this is the case.

Defendants’ disclaimer (Amend. Answer Exh. B) is positioned in a prominent location on Defendants’ website and, in Capital Letters, explains in great detail that there is absolutely no relationship of any kind between Knoll and Defendants and that Knoll is not the source of Defendants’ products. For example, on the page advertising the IBIZA Chair, Defendants’ inexpensive “knock off” of the Barcelona Chair, the website provides as follows

(http://www.regencyshop.com/p63/Ibiza-Chair---Pure-Leather,-Stainless-Steel/product_info.html?osCsid=b65f80dbf4916d4f18e182faa36900e7):

DISCLAIMER

OUR IBIZA CHAIR IS A REPLICA OF A CHAIR DESIGNED IN 1929 BY MIES VAN DER ROHE, OFTEN REFERRED TO AS THE BARCELONA CHAIR. KNOLL, INC. PRODUCES AND SELLS THE AUTHENTIC BARCELONA CHAIR, WITH THE ENGRAVED SIGNATURE OF MIES VAN DER ROHE AND A CERTIFICATE OF AUTHENTICITY, AT PRICES IN THE THOUSANDS OF DOLLARS, MANY TIMES HIGHER THAN THE PRICE OF OUR IBIZA CHAIR. OUR REPLICA OF THE BARCELONA CHAIR IS INTENDED FOR CONSUMERS WHO WISH TO PURCHASE A REPRODUCTION OF A CHAIR OF HISTORIC DESIGN AT AN AFFORDABLE PRICE. REGENCYSHOP HAS NO AFFILIATION WITH KNOLL AND DOES NOT SELL, DISTRIBUTE OR OFFER FOR SALE ANY PRODUCT MADE OR OFFERED FOR SALE BY KNOLL. WHILE THE IBIZA CHAIR HAS A SIMILAR DESIGN TO THE BARCELONA CHAIR SOLD BY KNOLL, REGENCYSHOP CANNOT GUARANTEE THAT THE IBIZA REPLICA CONFORMS TO THE EXACT SPECIFICATIONS OF THE CHAIR DESIGNED BY MIES VAN DER ROHE AND SOLD BY KNOLL. VISITORS TO THIS SITE WHO WISH TO CONSIDER BUYING THE BARCELONA CHAIR FROM KNOLL, SHOULD VISIT KNOLL'S WEBSITE AT KNOLL.COM.

The *sine qua non* of a trademark infringement case is, of course, proof that consumers may likely be confused. Knoll's Complaint thus alleges that: "As a result of Defendants' improper sale of furniture in the form of the designs that are the subject of Knoll's trademark registrations, architects, the furniture trade and the purchasing public are likely to buy Defendants' products in the erroneous belief that they are authorized reproductions of Knoll's trademarked designs or that the furniture items are otherwise associated with Knoll." (Am. Compl. ¶ 50.) As already noted, this kind of allegation, essentially offering assertions of law, may be discarded by a court considering a Rule 12(c) motion. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

But even if the allegation were given consideration, the simple fact is that it cannot stand in the face of Defendants' disclaimer, which is part of the pleadings (Am. Answer, Exh. B). No cognizable argument can be advanced that any rational

consumer could, in visiting Defendants' website, be misled as Knoll alleges. A judgment as a matter of law on this issue is therefore fully justified.¹⁵

IV. ***KNOLL'S DERIVATIVE STATE LAW CLAIMS SHOULD BE DISMISSED***

Knoll's complaint contains bare-bones allegations of two state law claims, unfair competition (Count III), and dilution under N.Y. Gen. Bus. L. § 360-l (formerly § 386-d) (Count IV). Unfair competition under New York Law is "almost indistinguishable" from a claim under 43(a) of the Lanham Act (addressed above), with the added burden that plaintiff must show that the alleged infringer acted in bad faith. *E.g.*, *United States Polo Ass'n v. PRL USA Holdings, Inc.*, 2011 U.S. Dist. LEXIS 51707, ** 54-55 (S.D.N.Y. 2011); *accord Genesee Brewing Co. v. Stroh Brewing Co.*, 124 F.3d 137, 149 (2d Cir. 1997). Given that Knoll's pleading fails to state a 43(a) claim, as a matter of law it cannot state a claim for unfair competition under New York law.

As far as Knoll's state law dilution claim is concerned, such a claim requires "(1) that the trademark is truly distinctive or has acquired secondary meaning, and (2) a likelihood of dilution either as a result of 'blurring' or 'tarnishment.'" *E.g.*, *Eyal R.D. Corp v. Jewalex N.Y. Ltd.*, 784 F. Supp. 2d 441, 449 (S.D.N.Y. 2011) (AKH). Since Knoll's trademarks are invalid because

¹⁵ Recognizing that there can be no confusion at the "point of sale"—that is, Defendants' website at the time a buyer makes a purchase--in Knoll's letter to the Court of November 28, 2011, it advances the argument that liability could be based on so-called post sale confusion. This theory is nowhere alleged by Knoll in its Complaint. And for good reason. The post-sale confusion cases deal with situations where people may see knockoffs, may believe that they are genuine, and may as a result buy these knockoffs believing them to be genuine. That scenario cannot happen here. Someone wanting a genuine Mies chair after seeing an IBIZA chair has only one place to go to buy a "genuine" reproduction—Knoll. If he goes to Defendants' site, he will immediately see the disclaimer. There is simply no way that Defendants' sale of Mies designs under their own trademark, caveated by an unprecedented disclaimer, could ever lead to actionable confusion. Knoll's post-sale argument is, as already noted, nowhere alleged in the Complaint or Amended Complaint. Knoll has sophisticated trademark counsel and the foolishness of a post-sale claim could not have been lost on them. Any request for leave to Amend to assert such a claim should be denied.

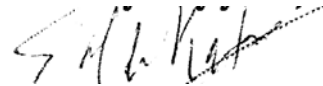
they purport to cover functional product shapes, Knoll cannot establish a dilution claim, which, as just noted, is dependent on the existence of a valid trademark. To provide greater protection than federal law, would violate the *Sears-Compco* and *Bonito Boats* line of cases. *See also Eyal*, 784 F. Supp. at 449 (dismissing dilution claim as preempted).

CONCLUSION

For the forgoing reasons, plaintiff's complaint should be dismissed with prejudice.

Dated: December 21, 2011

Respectfully submitted,



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Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KNOLL, INC.,

Plaintiff,

v.

MODERNO, INC. and URBAN MOD
INC., D/B/A REGENCY SHOP, and MIKE
SAXENA,

Defendants.

Civil Action No. 11-CV-0488

**AMENDED COMPLAINT
FOR TRADEMARK INFRINGEMENT
AND RELATED CAUSES**

JURY TRIAL DEMANDED

Plaintiff, by its attorneys, for its Complaint against the Defendants, alleges:

JURISDICTION AND VENUE

1. This is an action for violation of Sections 32 and 43 (a) of the Lanham Act, 15 U.S.C. §§ 1114, 1125; for violation of Section 360-I of the New York General Business Law; and for violation of the common law of the State of New York pertaining to unfair competition.

2. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. § 1338 and under principles of supplemental jurisdiction, 28 U.S.C. §1367(a). Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

THE PARTIES

3. Plaintiff Knoll, Inc. ("Knoll") is a corporation organized and existing under the laws of the State of Delaware, maintaining a place of business at 76 Ninth Avenue, New York, New York 10021.

4. Knoll is a leading designer and manufacturer of branded furniture.

5. Knoll believes that good design is good business. Indeed, since its founding in 1938, Knoll has been recognized as a design leader worldwide.

6. Knoll products are exhibited in major art museums worldwide, with more than 40 Knoll pieces in the permanent Design Collection of The Museum of Modern Art in New York, New York.

7.(a) Upon information and belief, Defendant Modemo, Inc., is a corporation organized and existing under the laws of California, maintaining a place of business at 1661 S. Diamond Bar Boulevard, Diamond Bar, California 901765, and has done and continues to do business as Regency Shop.

7. (b) Upon information and belief, Urban Mod, Inc., is a corporation organized and existing under the laws of Nevada, maintaining a place of business at 1625 W. 144th Street, Unit 2, Gardena, CA 90247, and has done and continues to do business as Regency Shop.

8. Upon information and belief, Defendant Mike Saxena, is an individual with an address at 1625 W. 144th Street, Unit 2, Gardena, CA 90247. Upon information and belief, Defendant Mike Saxena is a principal of Defendants Modemo, Inc. and Urban Mod, Inc., and is responsible for their infringing activities. (Collectively, Modemo, Inc., Urban Mod, Inc., and Mike Saxena are hereinafter referred to as "Defendants")

9. Defendants now conduct or have in the past conducted their business over the internet through their website at <http://www.regencyshop.com/>.

10. Defendants transact business within this district, derive revenue from intrastate and interstate commerce, and have committed tortious acts within this district

and also without this district having consequences within this district, and said Defendants are otherwise within the jurisdiction of this Court.

FACTS COMMON TO ALL COUNTS

LUDWIG MIES VAN DER ROHE

11. Ludwig Mies van der Rohe ("Mies van der Rohe") was a world-famous architect and one of the most influential architects of the twentieth century.

12. Mies van der Rohe was the director of the Bauhaus school of design from 1930 to 1933, and moved to the United States in 1937 to continue his architectural activities.

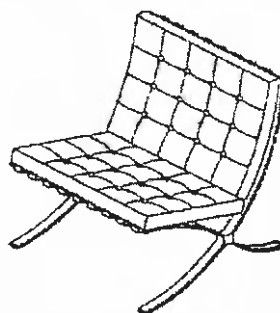
13. Among Mies van der Rohe's more well-known architectural works are the Seagram Building in New York City; the Lakeshore Drive Apartments in Chicago, Illinois; the German Pavilion for the 1929 Barcelona International Exhibition; and the Tugendhat House, in Brno, Czech Republic.

THE GERMAN PAVILION

14. In 1928, Mies van der Rohe was asked to design the German pavilion for the 1929 Barcelona International Exhibition. The result was one of Mies van der Rohe's most well-known architectural designs.

A. The Barcelona Chair

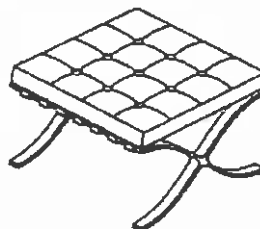
15. In addition to designing the German Pavilion, Mies van der Rohe also designed the furniture featured inside the pavilion. He designed a chair in the form of the design that is set forth below:



Architects, the furniture trade and the public have come to refer to this chair as the "Barcelona Chair".

B. The Barcelona Stool

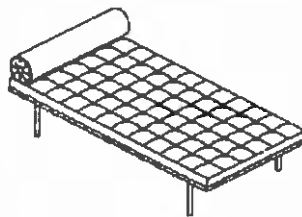
16. Along with the "Barcelona Chair", Mies van der Rohe also designed an ottoman for the German Pavilion in the form of the design that is set forth below:



Architects, the furniture trade and the public have come to refer to this ottoman as the "Barcelona Stool".

C. The Barcelona Couch

17. In 1930, Mies van der Rohe designed a couch or daybed that later gained fame when he featured it in the Farnsworth House, which he designed in 1948 for Dr. Edith Farnsworth. The couch was in the form of the design that is set forth below:



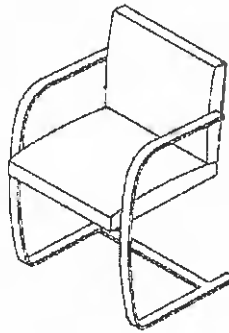
Architects, the furniture trade and the public have come to refer to this couch as the "Barcelona Couch".

THE TUGENDHAT HOUSE

18. In 1928, Mies van der Rohe was commissioned to design a home for Grete and Fritz Tugendhat. The resulting Tugendhat House in Brno, Czech Republic is one of Mies van der Rohe's most well-known architectural designs.

A. The Flat Brno Chair

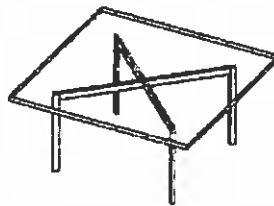
19. In addition to designing the Tugendhat House, Mies van der Rohe also designed much of the furniture used to furnish the Tugendhat House. He designed for the Tugendhat House a chair in the form of the design that is set forth below:



Architects, the furniture trade and the public have come to refer to this chair as the "Flat Brno Chair".

B. The Barcelona Table

20. Along with the "Flat Brno Chair", Mies van der Rohe also designed a table for the Tugendhat House in the form of the design that is set forth below:



Architects, the furniture trade and the public have come to refer to this table as the "Barcelona Table" or the "Tugendhat Table".

KNOLL AND ITS RIGHTS IN THE BARCELONA COLLECTION

21. By an agreement dating from November 1, 1965, Mies van der Rohe assigned all rights, title and interest in and to the design of the Barcelona Chair, the Barcelona Stool, the Barcelona Couch, the Barcelona Table and the Flat Brno Chair (hereinafter collectively referred to as the "Barcelona Collection") to predecessors of Knoll as to the rights herein involved.

22. Knoll and its predecessors in interest as to the rights herein involved have been continuously manufacturing, displaying, promoting and selling the Barcelona Collection since at least as early as January 1, 1954.

23. The various furniture items in the Barcelona Collection have been the subjects of third party commentary in numerous books, newspaper articles and magazine articles, virtually all of which identify Knoll or its predecessors in interest as to the rights herein involved as the source of these items.

24. The various furniture items in the Barcelona Collection are in the collections of numerous museums featuring design around the world, and have been featured in a number of museum exhibitions.

25. The Barcelona Collection is in the Museum of Modern Art's design collection. Some of these pieces have been there since the 1950s. The Museum of Modern Art, as well as other museums, always identify Mies van der Rohe as the designer of the Barcelona Collection, and Knoll as the source and manufacturer of these items.

26. Knoll markets and sells the Barcelona Collection throughout the United States and internationally. In connection with these efforts, Knoll maintains an internet website at <http://www.knoll.com>, which contains information about Knoll's furniture products. Knoll also issues advertising and promotional material relating to the Barcelona Collection, and has done so for many years.

27. As a result of all of the foregoing sales, manufacturing and promotional efforts, the Barcelona Chair, the Barcelona Stool, the Barcelona Couch, the Barcelona Table, the Flat Bmo Chair and the BARCELONA trademark have come to be associated with Knoll as their source.

KNOLL'S RELEVANT TRADEMARK REGISTRATIONS

28. On or about October 12, 2004, the Barcelona Chair was registered as a trademark with the United States Patent and Trademark Office. Knoll's registration for the Barcelona Chair, No. 2,893,025, remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit A.

29. On or about October 19, 2004, the Barcelona Stool was registered as a trademark with the United States Patent and Trademark Office. Knoll's registration for the Barcelona Stool, No. 2,894,977, remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit B.

30. On or about October 19, 2004, the Barcelona Couch was registered as a trademark with the United States Patent and Trademark Office. Knoll's registration for the Barcelona Couch, No. 2,894,980, remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit C.

31. On or about October 19, 2004, the Barcelona Table was registered as a trademark with the United States Patent and Trademark Office. Knoll's registration for the Barcelona Table, No. 2,894,979, remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit D.

32. On or about October 19, 2004, the Flat Bmo Chair was registered as a trademark with the United States Patent and Trademark Office. Knoll's registration for the Flat Bmo Chair, No. 2,894,978, remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit E.

33. Knoll is the owner of U.S. Trademark Registration No. 772,313 for the mark BARCELONA, which issued on or about June 30, 1964. Said registration remains in full force and effect and is incontestable. A copy of this registration is attached as Exhibit F.

MODERNO, INC. and URBAN MOD, INC.

34. Upon information and belief, Defendants Modemo, Inc., and Urban Mod, Inc., under the direction and control of Mike Saxena, are the marketers and retailers of furniture and related products, much of it embodying "modern design".

35. Defendants Modemo, Inc., and Urban Mod, Inc., under the direction and control of Mike Saxena, through the website www.regencyshop.com, advertise, promote and offer for sale furniture products in the form of the designs that are the subjects of Knoll's aforementioned trademark registrations. A printout of representative pages of Defendants' website is attached as Exhibit G.

36. Defendants Modemo, Inc. and Urban Mod, Inc., under the direction and control of Mike Saxena, have sold and continue to sell products in the form of or

derivatives of the designs that are the subjects of Knoll's aforementioned trademark registrations in New York and throughout the United States.

COUNT I [TRADEMARK INFRINGEMENT]

37. Plaintiff repeats and realleges each allegation in paragraphs 1-36 as if set forth in full herein.

38. Plaintiff has never authorized Defendants to sell reproductions of the Barcelona Chair or products derived from the items in the Barcelona Collection.

39. Upon information and belief, Defendants' acts have been done willfully and intentionally, with full knowledge of Plaintiff's trademark rights.

40. Knoll has given Defendants due notice of Plaintiff's rights but, as indicated by Defendants' current website, Defendants have failed to cease their infringing acts. Defendants' aforesaid activities, especially after notice, are willful. Defendants' continuation of their infringing acts has and will cause Plaintiff irreparable harm and injury.

41. Defendants have improperly sold goods in the form of the designs that are the subject of Knoll's trademark registrations and derived therefrom with the intent to cause confusion and mistake, to deceive and mislead the architects, the furniture trade and the purchasing public and to improperly appropriate the valuable trademark rights of Plaintiff.

42. Defendants' said acts violate Section 32 of the Lanham Act, 15 U.S.C. § 1114.

43. Plaintiff has no adequate remedy at law and is suffering irreparable harm

and damages as a result of the wrongful acts of Defendants in an amount thus far not determined.

COUNT II [FALSE DESIGNATION OF ORIGIN]

44. Plaintiff repeats and realleges each allegation in paragraphs 1-43 as if set forth in full herein.

45. Defendants' efforts to misrepresent themselves as a legitimate source of the items in the Barcelona Collection takes control of the reputation and goodwill of the designs for those items away from Knoll, which owns and is responsible for the goodwill of those designs in the United States.

46. Defendants have improperly sold goods in the form of the designs that are the subject of Knoll's trademark registrations with the intent to cause confusion and mistake, to deceive and mislead the architects, the furniture trade and the purchasing public and to improperly appropriate the valuable trademark rights of Plaintiff.

47. Defendants' said acts violate Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125 (a).

48. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and damages as a result of the wrongful acts of Defendants in an amount thus far not determined.

COUNT III [COMMON LAW UNFAIR COMPETITION]

49. Plaintiff repeats each allegation in paragraphs 1-48 as if set forth in full herein.

50. As a result of Defendants' improper sale of furniture in the form of the designs that are the subject of Knoll's trademark registrations, architects, the furniture trade and the purchasing public are likely to buy Defendants' products in the erroneous belief that they are authorized reproductions of Knoll's trademarked designs or that the furniture items are otherwise associated with Knoll.

51. Upon information and belief, Defendants have intentionally misappropriated the designs that are the subject of Knoll's trademark registrations with the intention of causing confusion, mistake and deception among consumers and the trade as to the source of the goods and with the intent to unfairly profit from Plaintiff's goodwill at Plaintiff's expense.

52. As a result of the foregoing, Defendants' actions constitute unfair competition and misappropriation which have had and will continue to have a detrimental effect on the general consuming public in violation of the common law of the State of New York.

53. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and damages as a result of the wrongful acts of Defendants in an amount thus far not determined.

COUNT IV [INJURY TO BUSINESS REPUTATION AND DILUTION]

54. Plaintiff repeats and realleges each allegation of paragraphs 1-53 hereof, as if fully set forth herein.

55. By reason of the practices and acts set forth above, Defendants are likely to injure Knoll's business reputation and dilute the distinctive quality of Plaintiff's marks, in violation of Section 360-l of the New York General Business Law.

56. These acts of Defendants are without the permission, license or consent of Plaintiff and, unless enjoined by this Court, Defendants will continue these practices and acts, thereby harming Plaintiff's business reputation and causing Plaintiff immediate and irreparable injury.

57. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damages as a result of the wrongful acts of Defendants in an amount thus far not determined.

WHEREFORE, Plaintiff demands:

A. An injunction permanently enjoining and restraining Defendants, their directors, officers, agents, servants, employees, successors, assigns, subsidiaries, related companies, parent companies, licensees, assigns, and all persons in active concert or participation with it:

1. From importing, marketing or selling furniture in the form of the designs that are the subject of Knoll's trademark registrations;
2. From importing, marketing or selling furniture in the form of the designs which are derived from the designs which are the subject of Knoll's trademark registrations;
3. From passing off or otherwise representing to architects, the furniture trade or public in any way that any product sold by Defendants emanates from, is related in source or sponsorship to, or is in any way related to Plaintiff;
4. From injuring Plaintiff's business reputation by diluting the distinctive quality of Plaintiff's products; and

5. From engaging in misappropriation, deceptive trade practices or acts in the conduct of Defendants' business by means of selling products embodying Knoll's trademarked designs or any designs substantially similar thereto;

B. Directing Defendants to deliver to Plaintiff or to destroy all furniture in its possession that is in the form of the designs that are the subject of Knoll's trademark registrations or is derived from the designs that are the subject of Knoll's trademark registrations;

C. Directing Defendants to immediately recall and destroy all of its catalogs showing, advertising or promoting furniture that is in the form of the designs that are the subject of Knoll's trademark registrations or is derived from the designs that are the subject of Knoll's trademark registrations;

D. Directing Defendants to remove all references to or images of furniture that are in the form of the designs that are the subject of Knoll's trademark registrations or is derived from the designs that are the subject of Knoll's trademark registrations from Defendant's internet website;

E. Directing Defendants to account to Plaintiff for all profits resulting from Defendant's infringing activities;

F. Awarding Plaintiff its damages from Defendants' wrongful acts;

G. Awarding Plaintiff three times the amount of Plaintiff's damages or Defendants' profits, whichever is greater;

H. Awarding Plaintiff the cost of this action, as well as reasonable attorneys' fees;

I. Awarding Plaintiff punitive damages as a result of Defendants' wrongful acts;
and;

J. Awarding Plaintiff such other and further relief as the Court may deem just
and proper.

PLAINTIFF DEMANDS A JURY TRIAL AS TO ALL MATTERS TRIABLE BY JURY

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Plaintiff
270 Madison Avenue
New York, New York 10016
(212) 684-3900
ggottlieb@grr.com
mmisthal@grr.com
apeikes@grr.com

Dated: October 26, 2011
New York, New York

By:

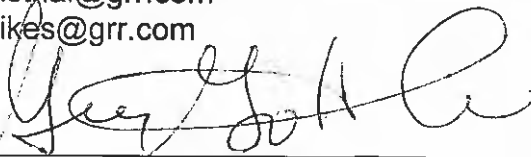

George Gottlieb (GG-5761)
Marc P. Misthal (MM-6636)
Ariel S. Peikes (AP-9157)

EXHIBIT A

Int. Cl.: 20

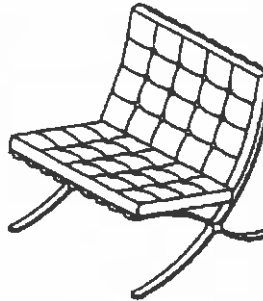
Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,893,025

Registered Oct. 12, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KNOLL, INC. (DELAWARE CORPORATION)
1235 WATER STREET
EAST GREENVILLE, PA 18041

THE MARK CONSISTS OF A CONFIGURATION
OF A CHAIR WITH A METAL FRAME AND
LEATHER CUSHIONS.

FOR: CHAIRS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25,
32 AND 50).

SEC. 2(F).

SER. NO. 76-356,817, FILED 10-22-2003.

FIRST USE 1-1-1954; IN COMMERCE 1-1-1954.

JAMES A. RAUEN, EXAMINING ATTORNEY

EXHIBIT B

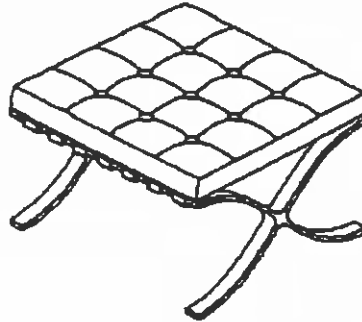
Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,894,977
Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KNOLL, INC. (DELAWARE CORPORATION)
1235 WATER STREET
EAST GREENVILLE, PA 18041

FOR: STOOLS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25,
32 AND 50).

FIRST USE 1-1-1954; IN COMMERCE 1-1-1954.

THE MARK CONSISTS OF A CONFIGURATION
OF A STOOL WITH A METAL FRAME SUPPORT-
ING A LEATHER CUSHION.

SEC. 2(F).

SER. NO. 76-556,816, FILED 10-22-2003.

JAMES A. RAUEN, EXAMINING ATTORNEY

EXHIBIT C

Int. Cl.: 20

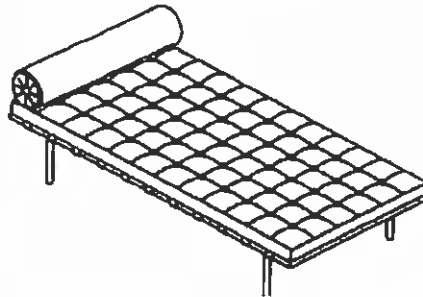
Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,894,980

Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KNOLL, INC. (DELAWARE CORPORATION)
1235 WATER STREET
EAST GREENVILLE, PA 18041

FOR: COUCHES, IN CLASS 20 (U.S. CLS. 2, 13, 22,
25, 32 AND 50).

FIRST USE 1-1-1954; IN COMMERCE 1-1-1954.

THE MARK CONSISTS OF A CONFIGURATION
OF A COUCH WITH A METAL FRAME SUPPORT-
ING A LEATHER CUSHION.

SEC. 2(F).

SER. NO. 76-556,824, FILED 10-22-2003.

THEODORE MCBRIDE, EXAMINING ATTORNEY

EXHIBIT D

Int. Cl.: 20

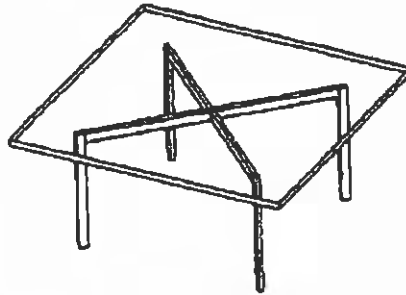
Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,894,979

Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KNOLL, INC. (DELAWARE CORPORATION)
1235 WATER STREET
EAST GREENVILLE, PA 18041

THE MARK CONSISTS OF A CONFIGURATION
OF A TABLE WITH A METAL BASE AND A GLASS
TOP.

FOR: TABLES, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25,
32 AND 50).

SEC. 2(F).

SER. NO. 76-556,821, FILED 10-22-2003.

FIRST USE 1-1-1954; IN COMMERCE 1-1-1954.

JAMES A. RAUEN, EXAMINING ATTORNEY

EXHIBIT E

Int. Cl.: 20

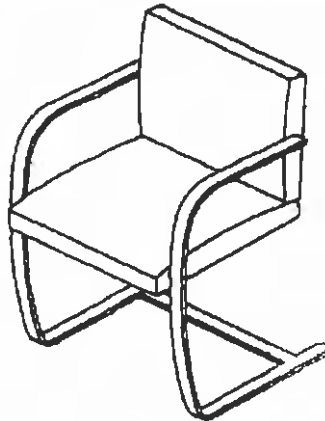
Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,894,978

Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KNOLL, INC. (DELAWARE CORPORATION)
1235 WATER STREET
EAST GREENVILLE, PA 18041

FOR: CHAIRS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25,
32 AND 50).

FIRST USE 1-1-1954; IN COMMERCE 1-1-1954.

THE MARK CONSISTS OF A CONFIGURATION
OF A CHAIR WITH A FLAT METAL FRAME
SUPPORTING A CUSHION.

SEC. 2(F).

SER. NO. 76-556,819, FILED 10-22-2003.

JAMES A. RAUEN, EXAMINING ATTORNEY

EXHIBIT F

**PRINCIPAL REGISTER
Trademark**

Ser. No. 177,235, filed Sept. 18, 1963

BARCELONA

Drexel Enterprises, Inc. (Delaware corporation)
1690 English St.
High Point, N.C.

For: LIVING ROOM, BEDROOM, AND DINING
ROOM FURNITURE, AND OCCASIONAL TABLES
AND CHAIRS, in CLASS 32.
First use Oct. 19, 1962; in commerce Feb. 27, 1963.

EXHIBIT G

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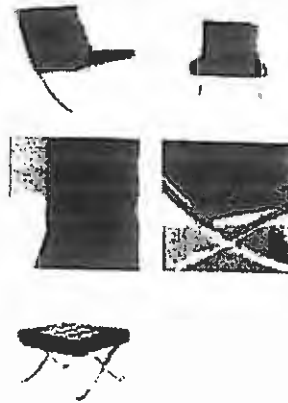
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Retail:
\$4,000.00

Sale:
\$345.00

Shipping:
\$140.00

Quantity
1

+ ADD TO CART

Available Options:

Ottoman:

Color:

Meticulously handcrafted with fine leather & leather match for the back and sides. Constructed using individual leather panels, each piece cut and hand-sewn. The frame is made from solid stainless steel.

FEATURES

- Genuine TOP-GRADE Leather seating area
- Stable and reliable design
- Stable and strong Stainless Steel frame
- Meets architectural specifications of the original design.

Dimensions:

Chair

height:30"

width:30"

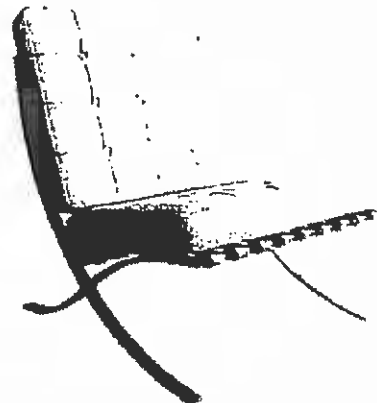
depth:30"

Color Options:

White

Black

Need replacement Cushions? Click here



This item is not an original Barcelona chair, nor is it manufactured by or affiliated with Knoll.

About the Mies van der Rohe Barcelona Chair: "So we" know it's one of the leading pieces of the Modern Movement. The Barcelona Chair, designed in 1929, is six feet long, three feet wide, and in fact, it's a perfect rectangle. Any chair that is a perfect rectangle is a contradiction in terms. It's a piece of history sitting in the room. Because Mies van der Rohe realized what was known as the Bauhaus movement that followed his famous dictum "form follows function." The Barcelona Chair is the perfect example of his belief. The frame is in the shape of an "X" and interestingly enough, the "X" looks like it's occupied—even when it is not. The shape is warped to look as though it's being pushed down. To get that look, each part of the bent and oblique frame is welded together, as opposed to using straight pieces, easily joined or screwed together. The chair was introduced at the German Pavilion Brücke Exhibition and seen by hundreds of Europeans whose enthusiasm grew in epidemic proportions. Everyone who picked up their own knowledge of the furniture was a memory of Louis XV or XV and said or wrote: was designed for upholstery. Barcelona Chairs were covered in leather—red and black and white—actually quite masculine, and, in spite of that, managed to strike the fancy of even the most delicate feminine tastes.

Mies' Barcelona Chair turned their heads—made them look at furnishings with a new eye—and they bought it. Perhaps the world was ready for something so remarkably different and 1929 was the right time for the debut of something radical. For it was that—in shades. Instead of being round, it was rectangular. Instead of being soft, it was firm. Instead of being a muted rose or beige, it was a rich, rich brown. The Barcelona Chair Mies van der Rohe had given to the world of interior design began a revolution that lasts to this day. Leather chairs and couches are a common occurrence. Straight, rectangular pieces occupy just about every home. Not so much that other styles have disappeared, but that the Modern Movement made a strong beginning and it's not over—in fact it has developed into plastic and odd-shaped pieces that make you wonder how they were created. Mies' furniture designs are still around, though, sitting as well as ever they did.

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PLEASE FULLY INSPECT YOUR SHIPMENT.

RETURNS:

Damage claims must be reported within 24 hours of delivery. A picture of the damaged item is required, no exceptions. Shipping is non-refundable, buyer pays return shipping. Pre-authorized returns only. Item can only be exchanged for the same item, no refunds are issued.

INTERNATIONAL SHIPPING:

We ship all across the globe. Please contact us for details.

LOCAL PICKUPS

We do offer local pickups in the Los Angeles area. Please contact us to schedule a pickup.

Retail:
\$4,000.00

Sale:
\$345.00

Shipping
\$140.00

Quantity
1

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You may also like:



Ibiza Leather Bench

Our Price: \$385.00

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Ball Chair



Drop Chair Stool



Bambo Bar Stools

Womb Style Chair & Ottoman



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Our Price:
\$399.00

Shipping:
\$189.00

Quantity:
1

+ ADD TO CART

Available Options:

Color:

The Ibiza bench is a high quality reproduction. The leather is hand selected, piped, tufted and individually sewn by expert leather craftsmen. A top notch reproduction of the classic design by Mies Van Der Rohe, our Bench features sleek minimalist styling, a perfect blend of art and function. Polished stainless steel legs add to the beauty of this modern classic design.

FEATURES

- Genuine 100% leather
- Solid steel frame
- Premium cushion construction

Dimensions:
52"W x 19"D x 16"H

Color:
Black
White



This item is not an original Barcelona bench, nor is it manufactured by or affiliated with Knoll.

About the original: Mies van der Rohe Barcelona bench

His work was exact, orderly, and precise. A member of the Bauhaus, Mies van der Rohe's architecture was the model others studied to attain the perfect proportions and simplicity that claimed his signature. Then he amazed his colleagues even further with his design for a Barcelona Bench, a scaled down version of his architecture meant to occupy space and explain his design concept. Did he know how deeply his sleek version of a classic would influence the furniture industry? It did. Furniture companies picked up on his ideal and, in time, New York apartments became the sophisticated repositories of the sleek, fashionable, and unadorned furnishings we have come to think of as "Modern." Accessories were next to adopt the style, with crystal appearing in square columns as vases, and coffee tables that matched the streamlined sofas.

Owning a replica of a Mies van der Rohe Barcelona bench is like owning a piece of architectural history. It represents the beginning of an era when van der Rohe led designers to see architecture in terms of pure geometry. His Barcelona house was a plain and simple rectangle, easily understood and adopted to a residential scale, and the furniture industry under Mies' influence, followed suit. His motto, "Form follows function" was the mantra of the day, and the Mies van der Rohe Barcelona bench is the epitome of his dictum. The metal legs are straight, sturdy, and minimalist in the Mies fashion. An unadorned rectangular slab of wood sits atop the legs on the Barcelona Bench, and strepped to the wood is a black leather cushion. These benches have been reproduced as a white Barcelona bench and a black Barcelona bench, although the original was black and sat in Mies' living room.

The white Barcelona bench would be well placed in a bedroom, the black—appropriate in a study or foyer. Think how interesting one of them might be, used as a coffee table in front of a soft-leather black leather sofa, or perhaps at the end of a black pedestal bed. Although Mies van der Rohe led the Bauhaus seventy-four years ago, his influence is still felt today in homes, offices and restaurants that enjoy the embrace of a classic, yet modern style. With only a slight difference in materials and scale, Mies would recognize the clean lines and rich materials of his Barcelona bench that led to a revolution in furniture design and lasted through a century.

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Our Price:
\$399.00

Shipping
\$189.00

Quantity
1

 ADD TO CART

Customers who bought this product also purchased



Bistro Jupiter Table



Eileen Table - Gray



Ibiza Chair - Pure Leather, Stainless Steel



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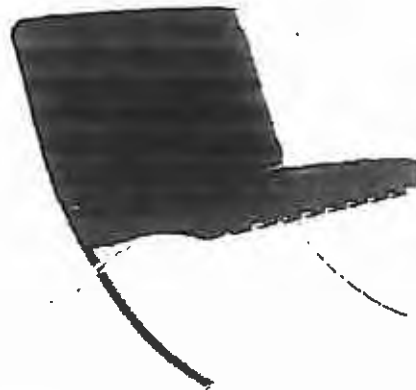
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Our Price:

\$185.00

Shipping:

\$99.00

Quantity:

1

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Available Options:

Color:

[Black](#)

PRICED PER SET (SEAT+BACK) Replacement cushions for your barcelona chair. Meticulously handcrafted with fine leather & leather match for the back and sides. High quality leather, crafted with precision.

[Click here for the Ibiza Chair >>](#)

FEATURES

- Genuine TOP-GRADE Leather
- Stable and reliable design

Dimensions:

Seat

31 x 23 x 4

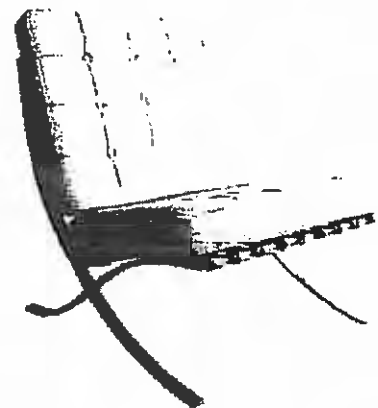
Back

31 x 20 x 4

Color Options:

[White](#)

[Black](#)



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Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNOLL, INC.,

Plaintiff,

No . 11 cv. 0488 (AKH)

-against-

MODERNO, INC. AND URBAN MOD, INC. d/b/a REGENCY SHOP,
AND MIKE SAXENA

Defendants.

AMENDED ANSWER OF DEFENDANTS MODERNO, INC. AND URBAN MOD,
INC. d/b/a REGENCY SHOP, AND MIKE SAXENA TO PLAINTIFF KNOLL,
INC.'S AMENDED COMPLAINT

Defendants MODERNO, INC. AND URBAN MOD, INC. d/b/a REGENCY SHOP, AND MIKE SAXENA (herein jointly and severally referred to as “Defendants”) hereby offer their Amended Answer to Plaintiff KNOLL, INC.’S (“Knoll”) AMENDED COMPLAINT.

1. Admit that this action purports to be brought under the statutes stated in Paragraph 1.
2. Admit that Paragraph 2 alleges that the Court has subject matter jurisdiction over the claims asserted.
3. Admit that Knoll claims to be a Delaware corporation but deny that Knoll has a principal place of business in New York.
4. Deny that Knoll is a leading designer of branded furniture and aver that Knoll mostly or entirely buys designs from third parties.
5. Admit that Knoll alleges its belief that design is good business but deny that Knoll has ever been recognized as a leading designer of furniture.
6. Deny that Knoll designed most or all of the referenced products.
- 7(a) Deny that Moderno is now doing any business related to the subject matter of this action.

- 7(b) Admitted.
8. Admit that Defendant Mike Saxena resides at the stated address and deny the remainder of the allegations of Paragraph 8.
9. Admitted.
10. Denied.
11. Defendants lack personal knowledge of the alleged facts.
12. Defendants lack personal knowledge of the alleged facts
13. Defendants lack personal knowledge of the alleged facts.
14. Defendants lack personal knowledge of the alleged facts.
15. Defendants admit that Ludwig Meis Van der Rohe and Lillian Reich are generally acknowledged as the designers of the said chair.
16. Defendants lack knowledge as to whether Van der Rohe designed the said stool by himself, as alleged, or with one or more other persons.
17. Defendants lack knowledge as to whether Van der Rohe designed the said couch by himself, as alleged, or with one or more other persons.
18. Defendants lack personal knowledge of the alleged facts.
19. Defendants lack knowledge as to whether Van der Rohe designed the said chair by himself, as alleged, or with one or more other persons.
20. Defendants lack knowledge as to whether Van der Rohe designed the said table by himself, as alleged, or with one or more other persons.
21. Defendants deny that Knoll acquired or has any rights in the “design[s]” of the said pieces of furniture, admit that Knoll had no involvement of any kind in the design of any of the said furniture pieces, and aver that the designs are in the public domain.
22. Denied.
23. Denied and aver that the items are almost always identified and associated with van der Rohe and in certain cases Lillian Reich.
24. Admit that Knoll alleges that the works of Ludwig Mies Van der Rohe may be found in certain museums.

25. Deny that the said museum identifies Knoll as “the source”, or always as the source, for said collection, and aver that Paragraph 25 alleges that some pieces of the collection may have been at the museum since before Knoll claims to have acquired any rights therein.
26. Defendants: decline to admit the allegations of the first sentence, as the words “throughout the United States and internationally” are imprecise and Defendants cannot answer based on personal knowledge; aver that Knoll’s website speaks for itself; and lack knowledge as to the allegations of the third sentence.
27. Defendants deny the allegation and aver that dozens if not hundreds of websites unrelated to Knoll offer reproductions of the Ludwig Mies van der Rohe designs referenced in paragraphs 15, 16, 17, 19, and 20 of the Amended Complaint. Defendants hereby incorporate by reference web pages attached as Exhibit A hereto as well as web pages that are available to the public on the Internet by inserting search terms such as, *inter alia*, “Mies furniture replicas”, “Barcelona chair replicas”, or “Mies chair.” Defendants further incorporate by reference Parts 1 through 8 of the Exhibit to the Declaration of Mike Saxena in Support of Defendants’ Motion to Dismiss (DKT. 15).
28. Defendants aver that the records of the Patent and Trademark Office speak for themselves.
29. Defendants do not herein respond to any legal assertions or conclusions alleged directly or by implication by Knoll, and aver only that the records of the Patent and Trademark Office speak for themselves.
30. Defendants do not herein respond to any legal assertions or conclusions alleged directly or by implication by Knoll, and aver only that the records of the Patent and Trademark Office speak for themselves.
31. Defendants do not herein respond to any legal assertions or conclusions alleged directly or by implication by Knoll, and aver only that the records of the Patent and Trademark Office speak for themselves.
32. Defendants do not herein respond to any legal assertions or conclusions alleged directly or by implication by Knoll, and aver only that the records of the Patent and Trademark Office speak for themselves.
33. Defendants do not herein respond to any legal assertions or conclusions alleged directly or by implication by Knoll, and aver only that the records of the Patent and Trademark Office speak for themselves.
34. Defendants do not accept the characterization of their business by Knoll and aver that the Regencyshop.com website speaks for itself.

35. Denied. Defendants sell nothing that is subject to any valid trademark right Knoll may possess. Knoll's Exhibit G was not the operative web page on Regencyshop.com at the time Knoll filed its complaint herein. The correct web pages are attached as Exhibit B. Defendants further aver that no rational person viewing the Regencyshop.com website could conceivably be misled into thinking that Regencyshop.com sells products sourced from Knoll or that, *inter alia*, there is any affiliation or relationship whatsoever between Knoll and Defendants.
36. Denied. Defendants sell nothing that is subject to any valid trademark right Knoll may possess.
37. Defendants repeat their responses as set forth in 1-36 above.
38. Denied to the extent that Knoll is alleging or implying that Defendants require its permission to sell public domain products.
39. Defendants deny having knowledge that Knoll possesses valid trademark rights in any product offered for sale on Regencyshop.com, and aver that Defendants have a good faith belief that Knoll does not possess, and knows it does not possess, any valid trademark rights in any products offered for sale by Regencyshop.com.
40. See Answer to 39 above. Defendants deny that Knoll could suffer or is threatened with any harm, including irreparable harm, by virtue of any activities of the Defendants. On information and belief, persons who buy from websites offering inexpensive replicas of Mies designs do so because they do not wish Knoll to be the source of their purchase.
41. Denied.
42. Denied.
43. Denied.
44. Defendants repeat their responses as set forth in 1-43 above.
45. Denied.
46. Denied.
47. Denied.
48. Denied.
49. Defendants repeat their responses as set forth in 1-48 above.
50. Denied.

- 51. Denied.
- 52. Denied.
- 53. Denied
- 54. Defendants repeat their responses as set forth in 1-53 above.
- 55. Denied.
- 56. Denied.
- 57. Denied.

AFFIRMATIVE DEFENSES

- 1. None of the counts for relief asserted by Knoll state a claim upon which relief may be granted.
- 2. The designs that Knoll seeks to enforce as trademarks are functional and unpatented and the public may not be prevented from freely copying and using them.
- 3. The Amended Complaint fails to allege or specify any non-functional aspects of the allegedly trademark-protected designs, and/or insufficiently does so.
- 4. Defendants have inserted disclaimers into relevant pages of Regencyshop.com that render it impossible for any rational consumer to be misled or confused, or likely to be misled or confused, into thinking that Defendants' products, sold under their IBIZA trademark, come from Knoll or that Defendants have any affiliation or other business arrangement with Knoll.
- 5. Knoll has abandoned and is estopped from asserting, whatever trademark rights it claims to have in the designs of the alleged, so-called Barcelona furniture, in that, on information and belief, for decades, it disclaimed ownership of trademark rights in said designs and/or did not enforce or effectively enforce said rights in the face of many companies selling, without license from Knoll, the same types of replicas that are being offered for sale on dozens if not hundreds of websites today, including Regencyshop.com.
- 6. The allegedly trademark-protected designs were in the public domain prior to the date they were allegedly acquired by Knoll.

7. This suit is barred by laches.
8. On information and belief, the allegedly trademark-protected designs were in part designed by Lillian Reich and Knoll has failed to allege that it acquired rights from her as it claims it acquired rights from Ludwig Mies van der Rohe.
9. Any use by Defendants of Knoll's alleged trademarks was and is a protected fair use under the Lanham Act.

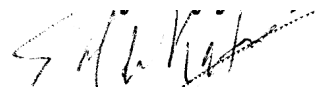
WHEREFORE, Defendants respectfully pray that the Court enter judgment for Defendants, setting forth that:

1. The trademark registrations Defendants are alleged to have infringed are invalid;
2. Defendants have never offered, and are not now offering, goods that could cause confusion or a likelihood of confusion with any of the trademarks asserted by Knoll in this action, and have not infringed any such trademarks;
3. Defendants have never engaged in any action that would threaten, and are not now engaging in any activity that would threaten, Defendants with any harm, including irreparable harm;
4. The allegedly trademark-protected designs are functional and in the public domain;
5. Any trademark rights in the designs in questions were abandoned by Knoll or a predecessor company;
6. Knoll shall pay the costs of this action;
7. This is an "exceptional case" within the meaning of 15 U.S.C. §1117(a) and Defendants shall be awarded their attorneys fees.

Defendants further pray for such other and further relief as the Court may find just and proper in the premises.

Dated: November 30, 2011

Respectfully submitted,
Katsh & Associates LLC



By: _____

Salem M. Katsh

64 Main Street
Hastings on Hudson
New York, 10706
914.231.7840

Cell. 646 712 1347
Fax. 646 417 5777
skatsh@katshlaw.com
Attorneys for Defendants

EXHIBIT A

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www.walmart.com/Furniture

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stores.advancedinteriordesigns.com

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www.steelform.com/

Modern Classic and Bauhaus Designer Furniture from Italy. steelform reproductions of
Bauhaus and modern classic designs by Le Corbusier, Mies van der ...

Modern Classic, Mid-Century Modern Furniture by Eileen Gray, Eero ...

www.eurofurniture.com/pages/mid_century_modern_/7.php

EuroFurniture offers the best in mid century Modern Classic reproduction furniture by
Mies van der Rohe, Eileen Gray, Le Coubusier, Eero Saarinen, Rene ...

IBIZA CHAIR *Only \$345 - HIGH QUALITY* barcelona chair replica ...

www.regencyshop.com/p63/Ibiza-Chair.../product_info.html

Even as replicas, Mies would recognize the clean lines and rich materials of his chair
that led to a revolution in furniture design and lasted through a century. ...

Reproduction Barcelona Chair - Modern Furniture & Contemporary ...

www.modernfurnitureclassics.com/index.php/main.../Title%204

Reproduction Barcelona Chair - The Knoll or Knock off Debate ... the market; the only
chair to bare an imprint of the Mies signature, and the only one that comes ...

Replica Mies Van der Rohe Barcelona Chair - Aniline Leather From ...



► 1:19

www.youtube.com/watch?v=bH-4aYemWNk

Jun 1, 2011 - 1 min - Uploaded by mattblatffurniture

See it here: <http://www.mattblatt.com.au/Replica-Lounge-Chairs>

/Replica-Mies- Van-der-Rohe-B ...

Replica Mies Van der Rohe Barcelona Leather Chair - Deluxe From ...



► 1:12

www.youtube.com/watch?v=_L0CmVZdNsg

Jun 7, 2011 - 1 min - Uploaded by mattblatffurniture

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/Replica-Mies- Van-der-Rohe-B ...

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Reproduction Of Mies Van Der Rohe Furniture products. buy ...

www.alibaba.com » Products » Furniture » Other Furniture

Reproduction Of Mies Van Der Rohe Furniture, Find complete details about
Reproduction Furniture from PROIEZIONE. You may also find other Reproduction ...

Ludwig Mies van der Rohe Brno Chair (replica) - Chairs - Furniture

nlini.com/.../ludwig-mies-van-der-rohe-brno-stol-replika.html?

Ludwig Mies Van Der Rohe Brno Chair (replica) Brno Chair - designed by Ludwig Mies
van der Rohe is a modern furniture classic. Ludwig Mies van der Rohe ...

Barcelona chair - Wikipedia, the free encyclopedia

en.wikipedia.org/wiki/Barcelona_chair

His first patent on a furniture design was issued in 1927 and his last in 1937. ... The
functional design and elements of it that were patented by Mies in Germany, Spain and
the ... Despite these trademarks, a large replica market continues. ...

[Ludwig Mies van der Rohe- Designer Furniture, Replica Furniture ...](#)
www.ie98.com/Ludwig.htm
About **Replica Designer Furniture**, **Replica Designer Furniture Show Room** · **Replica Designer Furniture** ... Ludwig **Mies van der Rohe** (1886-1969 German) , ...

Shopping results for mies furniture replicas



[Sixties Furniture, Mies Van Der Rohe, Barcelona Chairs ...](#)
\$14.99 - AllPosters.com
[Sixties furniture, mies van der rohe, barcelona chairs ...](#)
\$19.99 - Amazon.com
[Mies Van Der Rohe **Reproduction** Barcelona Chair - All ...](#)
\$699.00 - Manhattan Home Design

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Barcelona Chair at Amazon

www.amazon.com/furniture

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Replica Mies van der Rohe Barcelona Leather Daybed - Premium ...



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www.youtube.com/watch?v=c9Em5eG2h-8

Jun 7, 2011 - 48 sec - Uploaded by mattblattfurniture

See it here: http://www.mattblatt.com.au/Day-Bed/Replica-
Mies-van-der-Rohe- Barcelona-Leath ...

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www.controlbrand.com

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Swanky Rooms Sales Figures Show Singletons are Buying Sexy ...

www.prweb.com/releases/2011/7/prweb8623593.htm

Jul 8, 2011 - Image conscious singletons are turning to designer furniture replicas to ...
style chair, originally designed in the 1920s by Mies Van Der Rohe.

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Mies van der Rohe - Exhibition Chair

www.modernclassics.com/.../Mies-van-der-Rohe-Exhibition-Chair-p2...

Authentic reproduction of the classic Mies van der Rohe Barcelona Chair. ... Modern
Classics - Mid Century Modern Furniture Reproductions. Mid Century ...

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Mies Van Der Rohe Furniture Replica | Furniture Designs

www.furniture.com/tag/mies-van-der-rohe-furniture-replica

Jul 28, 2011 - Mies van der Rohe Furniture. Mies van der Rohe: Ludwig Mies van der
Rohe is one of the masters of modern architecture, Famous for his ...

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Barcelona Lounge Chair: Reproduction or Knoll? - Design Addict For...

www.designaddict.com/design_addict/forums/index.cfm/.../251/

Oct 29, 2011 - I am looking for a Mies Barcelona Lounge Chair & Ottoman. There seem
to be several places on the web selling Italian made reproductions that ...

Barcelona Chair - Buy Mies van der Rohe designs and Barcelona ...

www.milandirect.co.uk/shop/category/barcelona-furniture/

18 PRODUCTS - Buy from UK's Largest Supplier of Barcelona Chair - Buy Mies van der
Rohe ... Eames Furniture Replica · Barcelona Furniture · Dining Chairs ...

Mies Van Der Rohe | Modern Furniture | Modern Classic Furniture ...

www.modernfurnituredecor.com/miesinspired.html

Mies Van Der Rohe - Modern Furniture - Modern Classics. Modern Classic Inspired
Designs. Shop By: Select, Brand, Designer. JOIN Our Mailing List! E-mail: ...

[ExpositionT Coffee Table | Pavilion Table, Designer Furniture ...](#)

[www.sexyfurnishings.com > bar / lounge furniture > by category](#)

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www.myshopping.com.au/ZM--1186466038_Furniture

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[Classic modern furniture designs inspired by Verner Pantone ...](#)

www.puremodern.com/Modern...Furniture/Modern-Reproductions

Reproduction furniture has long been a way for consumers to enjoy timeless design ... Classic designs inspired by Verner Pantone, Charles Eames, Mies Van Der ...

[ludwig-mies-van-der-rohe | modern-classic-reproductions | what-can...](#)

www.designstudiofurniture.com/...reproductions/ludwig-mies-van-de

Mies van der Rohe's furniture is known for fine craftsmanship, a mix of traditional luxurious fabrics (like leather) combined with modern chrome frames, and a ...

[20th Century Furniture Design: The Scoop on Licensed Reproductions...](#)

www.apartmenttherapy.com/...licensed-reproductions-reissues-buyer

Sep 28, 2010 - Knockoffs are easy to find — In New York City, White Furniture specializes in vintage pieces and inexpensive reproductions of popular classics. ...

[Our reproductions are inspired by Mies Van Der Rohe - Shenzhen ...](#)

www.freeroom.cn/designers/mies-van-der-rohe.html

"Our reproductions are inspired by Mies Van Der Rohe, here are some ... infused with the same affinity for balance and a sleek visual form as his furniture. ...

[Barcelona Chair - Buy the Mies van der Rohe & Barcelona Sofa ...](#)

www.milandirect.com.au/shop/category/barcelona-furniture/

24 PRODUCTS - Milan Direct smashes the competition across our range of Mies van der Rohe and Barcelona Sofa replica furniture at Australia's best prices ...

[The New York Times > Home & Garden > Knocking Off the Knockoffs](#)

www.nytimes.com » Home & Garden

Oct 28, 2004 - Devotees of midcentury modernist furniture who want to furnish their ... (Knoll reproductions have Mies's signature stamped into the frame.) ...

[replica modern classic furniture Ludwig Mies Van der Rohe ...](#)

products.eworldtradefair.com/...-India

replica modern classic furniture Ludwig Mies Van der Rohe Barcelona stool Ottoman Manufacturer- Get replica modern classic furniture Ludwig Mies Van der ...

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furniture.beso.com

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www.jcpenny.com/Furniture

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[Barcelona chair](#)

barcelonachair.shopcompare.net

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www.furnitureseen.com

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www.gibraltarfurniture.com/

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www.modernclassics.com/modernclassics-instock.html

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on-Hudson, NY
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[Barcelona Chairs. The Barcelona Chair by Mies Van der Rohe](#)

www.barcelonachairs.net/

History tells us that Mies van der Rohe, the architect of the German Pavillion at the ... for a comfortable rest on a nice piece of furniture when visiting the Pavillion. ... Despite Knoll's trademarks, a large replica market is flourishing, even for the ...

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www.youtube.com/watch?v=JW-N6n9kqlw

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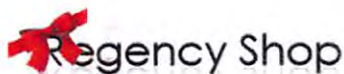
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FEATURES

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Height: 30"	-
Width: 32"	Width: 24"
Depth: 31"	Depth: 26"
Seat Height: 18.5"	Seat Height: 18.5"

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